

HOUSE BILL No. 1182

DIGEST OF INTRODUCED BILL

Citations Affected: IC 24-4-12.

Synopsis: Retail tobacco products dealer license. Requires a person to obtain a retail tobacco products dealer license to sell a tobacco product at retail, sell a tobacco product in a vending machine, allow a vending machine containing a tobacco product to be located on the person's premises, or distribute a tobacco product to the public without charge. Provides that the department of state revenue is the licensing agency. Establishes a \$50 annual license fee. Provides that a dealer must obtain a separate license for each place of business and each tobacco products vending machine, with a maximum total fee of \$500. Provides that a person dealing in tobacco products without a license is to be fined up to \$1,000. Provides that the first violation by a licensed dealer of the licensing requirements or criminal laws relating to the sale
(Continued next page)

Effective: July 1, 1999.

Crawford

January 6, 1999, read first time and referred to Committee on Commerce and Economic Development.



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Digest Continued

of tobacco to minors shall result in a written warning; the second violation, a three day license suspension; and the third violation, a license suspension of three days to six months and a fine of up to \$1,000. Requires the department to deposit all fees and fines in the state general fund. Requires the department to submit an annual report to the governor and the legislative council beginning July 1, 2000.

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Introduced

First Regular Session 111th General Assembly (1999)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 1998 General Assembly.

HOUSE BILL No. 1182

A BILL FOR AN ACT to amend the Indiana Code concerning trade regulations; consumer sales and credit.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 24-4-12 IS ADDED TO THE INDIANA CODE AS
2 A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY
3 1, 1999]:

4 **Chapter 12. Retail Tobacco Products Dealer License**

5 **Sec. 1. As used in this chapter, "dealer" means a person who is**
6 **required to hold a retail tobacco products dealer license under this**
7 **chapter.**

8 **Sec. 2. As used in this chapter, "department" refers to the**
9 **department of state revenue.**

10 **Sec. 3. As used in this chapter, "license" refers to a retail**
11 **tobacco products dealer license.**

12 **Sec. 4. As used in this chapter, "person" includes, but is not**
13 **limited to, an individual, corporation, limited liability company,**
14 **partnership, firm, association, or joint venture, or any combination**
15 **thereof.**

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IN 1182—LS 6685/DI 98+



1 **Sec. 5. As used in this chapter, "responsible tobacco products**
 2 **dealer" means a dealer who:**

3 (1) establishes and implements procedures to ensure that the
 4 dealer's employees and agents comply with the provisions of
 5 this chapter, IC 35-46-1-10, IC 35-46-1-11, IC 35-46-1-11.2,
 6 IC 35-46-1-11.3, and IC 35-46-1-11.5; and

7 (2) provides a training program for the dealer's employees
 8 and agents that addresses the use and sale of tobacco products
 9 and includes the following topics:

10 (A) Laws governing the sale of tobacco products.

11 (B) Methods of recognizing and handling customers less
 12 than eighteen (18) years of age.

13 (C) Procedures for proper examination of identification
 14 cards to verify that customers are at least eighteen (18)
 15 years of age.

16 (D) Use of the age audit identification function on
 17 electronic point of sale equipment, where available.

18 **Sec. 6. As used in this chapter, "tobacco product" means:**

19 (1) loose tobacco leaves; and

20 (2) any product made from tobacco leaves, in whole or in part,
 21 that can be used for smoking, sniffing, or chewing.

22 The term includes snuff.

23 **Sec. 7. As used in this chapter, "vending machine" means a**
 24 **mechanical or an electronic device or a receptacle designed:**

25 (1) to receive a coin, bill, or token made for that purpose; and

26 (2) to automatically dispense a tobacco product or other
 27 property in return for the insertion or deposit of a coin, bill,
 28 or token.

29 **Sec. 8. A person may not:**

30 (1) sell a tobacco product at retail;

31 (2) sell a tobacco product in a vending machine;

32 (3) allow a vending machine containing a tobacco product to
 33 be located on the person's premises; or

34 (4) distribute a tobacco product to the public without charge;

35 in the state unless the person has received a retail tobacco products
 36 dealer license under this chapter.

37 **Sec. 9. (a) The department shall develop an application for a**
 38 **retail tobacco products dealer license and provide it to a person**
 39 **upon request.**

40 (b) The application developed under subsection (a) must contain
 41 the following information concerning the applicant:

42 (1) The name under which the applicant transacts or intends



to transact business.

(2) The address of the applicant's place of business within the state.

(3) The names and addresses of:

(A) the members of the firm, association, partnership, or limited liability company, if the applicant is a firm, association, partnership, or limited liability company; or

(B) the principle officers of the corporation, if the applicant is a corporation.

(4) Any other information the department requires.

Sec. 10. (a) A person may obtain a retail tobacco products dealer license by:

(1) filing an application with the department; and

(2) paying a license fee of fifty dollars (\$50).

(b) The application must be signed and verified by oath or affirmation by:

(1) the owner, if the applicant is a sole proprietor;

(2) the members or partners of the firm, association, partnership, or limited liability company, if the applicant is a firm, association, partnership, or limited liability company; or

(3) an executive officer or a person authorized by the corporation to sign the application, if the applicant is a corporation.

Sec. 11. (a) Except as provided in subsection (b), if the applicant has or intends to have more than one (1) place of business dealing in tobacco products in the state, the applicant must:

(1) file a separate application; and

(2) pay a separate license fee;

for each place of business.

(b) If the applicant has or intends to have ten (10) or more places of business dealing in tobacco products in the state, the applicant must:

(1) file a separate application for each place of business; and

(2) pay a license fee of five hundred dollars (\$500).

Sec. 12. (a) Except as provided in this section, if the applicant has or intends to have more than one (1) vending machine in the state, the applicant must:

(1) file a separate application; and

(2) pay a separate license fee;

for each vending machine.

(b) If the applicant has or intends to have ten (10) or more vending machines in the state, the applicant must:



1 (1) file a separate application for each vending machine; and

2 (2) pay a license fee of five hundred dollars (\$500).

3 (c) A dealer need obtain only one (1) license if the dealer has
4 more than one (1) vending machine at the same location.

5 (d) A dealer need obtain only one (1) license if tobacco products
6 are sold both over the counter and through a vending machine at
7 the same location.

8 **Sec. 13.** An applicant for a license, by accepting the license when
9 issued, agrees that the premises or vending machine covered by the
10 license is subject to inspection and search without a search warrant
11 by the department or its authorized assistants and by law
12 enforcement officers to determine compliance with this chapter.

13 **Sec. 14.** Upon approval of an application for a license, the
14 department shall issue to the applicant a license for the premises
15 or vending machine specified in the application.

16 **Sec. 15. (a)** The department may not issue a license to:

17 (1) an individual who is less than eighteen (18) years of age;

18 (2) a firm, association, partnership, or limited liability
19 company with a member who is less than eighteen (18) years
20 of age; or

21 (3) a corporation with an officer who is less than eighteen (18)
22 years of age.

23 (b) The department shall revoke a license issued to a person
24 prohibited from obtaining a license under subsection (a).

25 **Sec. 16.** The department may refuse to issue a license to:

26 (1) a person whose license has been revoked;

27 (2) a firm, association, partnership, or limited liability
28 company with a member whose license has been revoked;

29 (3) a corporation with an officer whose license has been
30 revoked; or

31 (4) a person who is or has been:

32 (A) a member of a firm, association, partnership, or
33 limited liability company; or

34 (B) an officer of a corporation;

35 whose license has been revoked.

36 **Sec. 17. (a)** A license issued under this chapter is valid for one
37 (1) year after the date of issuance.

38 (b) The holder of a license may renew the license each year, on
39 or before the anniversary of the date of issuance, by payment of the
40 annual license fee required under sections 10, 11, and 12 of this
41 chapter.

42 (c) If a dealer does not timely renew the dealer's license, the

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dealer must pay a delinquent renewal fee of five dollars (\$5) for each month or portion of a month occurring after expiration, and before renewal, of the dealer's license.

Sec. 18. A license issued under this chapter is:

(1) not assignable; and

(2) valid only for:

(A) the person in whose name the license is issued; and

(B) the place or vending machine designated in the license.

Sec. 19. (a) A dealer must display the license issued under this chapter in a conspicuous place at all times at the place for which the license was issued.

(b) A dealer must display a license issued under this chapter for a vending machine in a conspicuous place at all times on or near the vending machine.

Sec. 20. (a) If a license issued under this chapter is lost or destroyed, the dealer may apply to the department for the issuance of a duplicate license.

(b) The department shall issue a duplicate license upon payment of a fifteen dollar (\$15) replacement fee.

Sec. 21. The department may not grant an exemption from the fees required under this chapter to any applicant.

Sec. 22. (a) A dealer shall exercise due diligence in:

(1) the management and supervision of the dealer's premises; and

(2) the supervision and training of the dealer's employees or agents.

(b) In proceedings to impose penalties under section 23 of this chapter, proof that any employee or agent of a dealer was cited for at least three (3) violations of IC 35-46-1-10:

(1) during a period of one hundred eighty (180) days; and

(2) within the scope of the employee or agent's employment or duty;

shall be prima facie evidence of a lack of due diligence by the dealer as required under this section.

Sec. 23. (a) The department shall impose a fine of up to one thousand dollars (\$1,000) upon a dealer who is cited for failing to obtain a license as required by this chapter.

(b) The department shall impose upon a dealer who has obtained a license under this chapter the following penalties for a violation of this chapter, IC 35-46-1-10, IC 35-46-1-11, IC 35-46-1-11.2, IC 35-46-1-11.3, or IC 35-46-1-11.5 by the dealer or the dealer's agent or employee:



- (1) for the first violation, a written warning;
- (2) for the second violation, a suspension of the dealer's license for three (3) days; and
- (3) for the third violation:
 - (A) a suspension of the dealer's license for a minimum of three (3) days and a maximum of six (6) months; and
 - (B) a fine of up to one thousand dollars (\$1,000).

(c) The department may suspend the imposition of a penalty against a dealer conditioned upon the dealer's compliance with terms the department considers appropriate.

(d) In determining the penalties under this section, the department may mitigate the penalties imposed against a dealer because of an employee's illegal sale of a tobacco product to an individual less than eighteen (18) years of age if the following conditions exist:

- (1) The dealer is qualified as a responsible retail tobacco products dealer.
- (2) The dealer provided the training described under section 5 of this chapter to the employee before the illegal sale occurred.
- (3) The dealer had no knowledge of the employee's violation at the time of the violation and did not direct, approve, or participate in the violation.
- (4) If the sale was made through a vending machine, the machine was equipped with an option lock-out device.

(e) A penalty imposed under this section is in addition to any other appropriate penalty.

Sec. 24. The department shall deposit all fees and fines received under this chapter into the state general fund.

Sec. 25. The department shall file an annual report with the governor and the legislative council, beginning July 1, 2000. The report shall include, but is not limited to:

- (1) the number and results of compliance visits;
- (2) the number of violations for:
 - (A) failure of a dealer to hold a valid license; and
 - (B) other provisions of this chapter, IC 35-46-1-10, IC 35-46-1-11, IC 35-46-1-11.2, IC 35-46-1-11.3, or IC 35-46-1-11.5; and
- (3) the penalties and administrative fines assessed for violations listed under subdivision (2).

Sec. 26. The department may adopt rules under IC 4-22-2 to implement this chapter.



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